CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL

Plaintiff and Respondent

v.

GERALD ARMSTRONG,

Defendant and Appellant.

Appeal No. A075027

Marin County Superior Court No. 157680

APPELLANT'S OPENING BRIEF

Gerald Armstrong
C/O George W. Abbott, Esquire
2245-B Meridian Boulevard
P.O. Box 98
Minden, Nevada 89423-0098
Defendant and Appellant
In Propria Persona
(702)782-2302

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I. INTRODUCTION

This is an appeal from a Marin County Superior Court judgment obtained by plaintiff Church of Scientology International, hereinafter (also with other components of the global Scientology organization) "Scientology" or "Scn," against defendant Gerald Armstrong, hereinafter "Armstrong" or "GA," pursuant to a series of summary adjudication motions. The judgment (Clerk's Transcript on Appeal, hereinafter "CT," 9783-85) includes a monetary award of $300,000 in "liquidated damages," $334,671.75 in costs, and an order of permanent injunction against GA. The judgment and injunction (CT 9786-94) are the result of the enforcement by way of breach of contract action of a 1986 "Mutual Release of All Claims and Settlement Agreement," hereinafter "SA" (CT 116-31) which was to end then existing Los Angeles Superior Court litigation between Scn and GA. The SA requires, inter alia, that GA not mention Scn, his knowledge thereof or experiences therein(CT 121-3), not voluntarily assist or advise Scn's litigation opponents including governmental agencies (CT 125,6; 128), and avoid service of process (CT 125,6). The SA also included a liquidated damages provision of $50,000 (CT 123) for any such mention or assistance by GA. Scn claims that GA violated the SA some 50 times, which are listed in the injunction, between 1991 and 1995. (CT 9787-91)

The order of injunction states:

"[GA], his agents, employees, and persons acting in concert or conspiracy with him are restrained and enjoined from doing directly or indirectly any of the following:

1. Voluntarily assisting any person (not a government organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim, regarding such claim or regarding pressing, arbitrating, or litigating it, against any of the following persons or entities:

- [The Church of Scientology International, Church of Scientology of California, Religious Technology Center, Church of Spiritual Technology, all Scientology and Scientology affiliated Churches, organizations and

entities, Author Services, Inc., and all their officers, directors, agents, representatives, employees, volunteers, successors, assigns and legal counsel;]

- The Estate of L. Ron Hubbard, its executor, beneficiaries, heirs, representatives, and legal counsel; and/or
- Mary Sue Hubbard;

(Hereinafter referred to collectively as "the Beneficiaries");

2. Voluntarily assisting any person (not a government organ or entity) defending a claim, intending to defend a claim, intending to defend an arbitration, or intending to defend any claim being pressed, made, arbitrated or litigated by any of the Beneficiaries, regarding such claim or regarding defending, arbitrating, or litigating against it;

3. Voluntarily assisting any person (not a government organ or entity) arbitrating, or litigating adversely to any of the Beneficiaries;

4. Facilitating in any manner the creation, publication, broadcast, writing, filming audio recording, video recording, electronic recording or reproduction of any kind of any book, article, film, television program, radio program, treatment, declaration, screenplay or other literary, artistic or documentary work of any kind which discusses, refers to or mentions Scientology, the Church, and/or any of the Beneficiaries;

5. Discussing with anyone, not a member of Armstrong's immediate family or his attorney, Scientology, the Church, and/or any of the Beneficiaries."

GA contends that his signature was obtained by Scn on the SA by duress, fraud and the compromise of his then attorney. GA contends that all his alleged breaches of the SA were in response to and in self-defense against Scn's post-settlement attacks on him, and that as such his actions were legally justified. He contends that the purpose and function of the SA and its

enforcement are obstruction of justice, and as such are against public policy. He contends that the SA and the injunction impermissibly violate his Constitutional rights to freedom of religion, freedom of speech, freedom of association, due process and freedom from slavery; and impermissibly eliminate his litigant's, clergyman-penitent, therapist-patient and doctor-patient privileges. GA contends that the liquidated damages provision impermissibly acts as punishment, that the amount has no reasonable relationship to Scn's actual damages for his alleged breaches, and that there are sufficient disputed facts concerning circumstances at the time of the settlement of the Los Angeles action to make imposition of monetary damages and disposition of the case by summary judgment clear judicial error. GA contends that there is also a triable issue of fact as to the intentions of the settling parties regarding Scn's being bound by the same silence conditions. Finally, GA contends that the court below erred in not considering his defenses and not considering the miscarriage of justice which would result from its erroneous judgment.

GA is not an attorney and has no present access to published California and US laws and appellate opinions. He was represented by competent counsel throughout most of the litigation in the court below, and he relies on and incorporates herein his counsel's memoranda of points and authorities in his oppositions, with all arguments and citations therein, to Scn's various summary adjudication motions (CT 8252-75; 8243-51; 3875-98; 9349-63) and in his motion for reconsideration and reply. (CT 9046-62; 9509-18)

II. ARMSTRONG'S HISTORY WITH SCIENTOLOGY

Unless otherwise indicated, all facts in this section are from GA's Separate Statements of Disputed and Undisputed Facts in Opposition to Summary Adjudication Motions (CT 8276-410; 8411-553) and GA's Evidence in Support of Oppositions to Summary Adjudication Motions (CT 5871-8242), all properly before the trial court. Any document cited to is identified only in the initial citation. Facts stated in the Separate Statements are designated (SS (no.), CT (no.). Certain documents contained in GA's Evidence before the court below, which are inexplicably missing from the Clerk's Transcript, and are designated "Missing."

A. Pre-Settlement

GA was inside Scn from 1969 through 1981. From 1971 until he left the organization he was a member of the Sea Organization, the highly dedicated upper echelon of Scn, and worked for Scn founder and director L. Ron Hubbard. GA's last position inside Scn involved assembling an archive of Hubbard's personal documents and providing research assistance and copies of the archive documents to a writer Omar Garrison who had been contracted to produce Hubbard's biography. Through his study of the papers in his possession GA came to see that Hubbard and his organization had continuously lied about Hubbard's past, credentials and accomplishments. GA attempted to get the organization to correct the lies, but his efforts were rejected and he was ordered to a "security check," a Scn interrogation using its lie detector, also called an E-meter. GA saw that his trust, which he had placed in Hubbard and Scn for more than 12 years, had no meaning, and that the frauds perpetrated about Hubbard's life would continue; and as a result GA left the organization. (Decision, 6/20/84, Scientology v. Armstrong, hereinafter, "Armstrong I,"LASC No. 420153, CT 5960-70)

Shortly after leaving, GA became the target of Scn's "Fair Game Doctrine," which permits individuals designated as "enemies," also called "Suppressive Persons," hereinafter "SP's," to be "deprived of property, injured by any means by any Scientologist... tricked, sued, or lied to or destroyed." (Scn Policy, CT 6934; SS 1A, CT 8412) GA says that "fair game" is the name given by Hubbard to his philosophy of opportunistic hatred directed at anybody he didn't like. GA observes that over Hubbard's adult life he used hatred and acts which flow therefrom (lying, cheating, stealing, compromising, entrapping, obstructing, bullying, blackmailing, destroying) as the solution to his problems. (GA Declaration 12/25/90, CT 6139,40) Scn declared GA an SP, published documents accusing him falsely of crimes and high crimes including promulgating false information about Hubbard and Scn (SP Declares, CT 7354-7; SS 1A, CT 8416,7), and seized photographs GA possessed. Fearing that his wife's and his life were in danger GA, who had extensive knowledge of covert intelligence operations carried out by Scn against SPs, obtained from Garrison documents GA believed he

would need to defend himself against Scn, and sent them to attorneys who had agreed to represent him in his defense. (CT 5972,3; SS 1A, CT 8412) One of the attorneys was Michael Flynn, whom Scn considered its foremost lawyer enemy. (CT 5958)

Scn filed its Armstrong I suit against GA in August, 1982 for conversion, breach of fiduciary duty and invasion of privacy. The documents GA sent to his attorneys were ordered to be delivered to the LASC Clerk where they remained until the 1986 settlement. Scn also hired individuals who followed and surveilled GA, assaulted him, struck him bodily with a car, and attempted to involve him in a freeway accident. The same individuals spied in GA's windows, created disturbances and upset his neighbors. (CT 5973,4; SS 1A, CT 8412) GA filed a cross-complaint against Scn for, inter alia, fraud and intentional infliction of emotional distress.

Scn's suit, from which the cross-complaint was severed, was tried without a jury by Judge Paul G. Breckenridge, Jr. in the spring of 1984, resulting in a decision for GA. Judge Breckenridge found that Scn and Mary Sue Hubbard had unclean hands and that GA's actions in sending the documents to his attorneys were reasonable and justified because he reasonably believed he was the target of "fair game." (CT 5948-59; SS 126, CT 8517) The Judge stated:

> "[GA] did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH (Hubbard), the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything he had been saying about LRH and the Church, or refute the allegations made against him in the [SP] Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church or any of their agents

would do him physical harm." (CT 5952)

Judge Breckenridge condemned Scn's "fair game" policy:

"In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile." (CT 5955,6)

Judge Breckenridge condemned Scn's abuse of its participants' auditing or psychotherapy records:

"culling supposedly confidential "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous." (CT 5958,9)

Judge Breckenridge commented on GA's credibility:

"the court finds the testimony of [GA and 7 other named defense witnesses] to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. [ ] In all critical and important matters, their testimony was precise, accurate and rang true." (CT 5954)

Judge Breckenridge also stated that:

"[GA] and his counsel are free to speak or communicate upon any of [GA's} recollections or his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed." (CT 5950)

The decision was entered as a Judgment and Scn appealed.

Following the 1984 decision and until the 1986 settlement Scn continued its fair game attacks on GA which included at least these acts: attempted entrapment; illegal videotaping; filing false

criminal charges against him with the Los Angeles District Attorney; filing false criminal charges against him with the Boston office of the FBI; filing false declarations to bring contempt of court proceedings against him on three occasions; obtaining perjured affidavits from English private investigators who had harassed him in London, England in 1984, accusing him of distributing "sealed" documents; international dissemination of Scientology publications falsely accusing him of, inter alia, crimes, including crimes against humanity; culling and disseminating information from his supposedly confidential auditing or psychotherapy file. (SS 1A, CT 8413-8; GA Declaration, 3/16/92, CT 6910-1; GA Declaration, 9/15/95, CT 5897-9; LAPD Officer Rodriguez letter re eavesdropping, 11/7/84, CT 6941; LAPD Chief Gates Announcement, 4/23/85, CT 6942; LA DA letter, 4/25/86, CT 6943-55; "Freedom," 1985, CT 7060-71; Scn Directive, 9/20/84, CT 7119,20); GA Declaration, 11/1/86, CT 6411-47. Scn calls falsehoods used to destroy reputation or public belief in a person, "black propaganda," or "black PR." (SS 1A, CT 8413; Scn policies 11/21/72 and 11/5/71, CT 7376-87) Scn also calls black PR "dead agent," and documents used for black PR purposes "dead agent documents" or "DA docs." See also Scn's Request for Judicial Notice, GA Declaration, 2/22/94, (CT 5580-93; GA Declaration, 2/20/94, CT 5624-39; SS 1A)

GA's attorney Michael Flynn was the target of Scientology's fair game from 1979 through the time of the signing of the settlement agreements. Fair game acts against Flynn included infiltrating his office, paying known criminals to testify falsely against him, suing him and his office some fifteen times, framing him with the forgery of a $2,000,000 check, and an international black PR campaign. (SS 1B, CT 8418-20; GA Declaration, 9/9/95, CT 8245; CT 6125; GA Declaration, 1/13/94, CT 6967,8; "Juggernaut" Intelligence Eval, 9/13/81, CT 6310-6324; Jonathan Atack Declaration, 4/9/95, CT 7964; Settlement Agreement between Flynn and clients 6938,9 (signed version at CT 5483); CT 5899,900).

B. The Settlement

At the beginning of December, 1986 an agreement was reached between Flynn and Scn to settle the cases in which he was involved as counsel or party. GA was then working for Flynn in his Boston

office, was aware that settlement talks were occurring, and had an agreement with Flynn on a monetary amount to settle his cross-complaint, then set for trial in March, 1987. GA was flown to Los Angeles, as were several other clients with claims against the organization, to participate in a global settlement. Only after his arrival in LA was he shown a copy of the SA and other documents which he was expected to sign. (CT 6911,2; 6125,6; 5900,1)

Upon reading the SA, GA was shocked and heartsick. He told Flynn that the condition of strict confidentiality and silence with respect to his experiences with Scn, since they involved over seventeen years of his life, was impossible. GA told Flynn that the liquidated damages provision was outrageous; that pursuant to the settlement agreement he would have to pay $50,000.00 if he told a doctor or psychologist about his experiences from those years, or if he put on a resume what positions he had held during his Scn years. He told Flynn that the requirements of non-amenability to service of process and non-cooperation with persons or organizations adverse to the organization were obstructive of justice. He told Flynn that agreeing to leave Scn's appeal of the Armstrong I decision and not respond to any subsequent appeals was unfair to the courts and all the people who had been helped by the decision. He told Flynn that an affidavit the organization was demanding that he sign along with the SA was false. GA told Flynn that he was being asked to betray everything and everyone he had fought for against Scn injustice. (CT 6911-2; 6126,7; 5901)

In answer to GA's objections Flynn said that the silence and liquidated damages clauses, and anything which called for obstruction of justice were "not worth the paper they're printed on." Flynn told GA this a number of times and in a number of ways; "You can't contract away your Constitutional rights; "the conditions are unenforceable." Flynn said that he had advised Scn attorneys that those conditions in the SA were not worth the paper they were printed on, but that they, nevertheless, insisted on their inclusion in the SA and would not agree to any changes. Flynn said that Scn's attorneys had promised that the affidavit, which all the settling litigants were signing, would only be used by Scn if GA began attacking it after the settlement; and if GA did not

attack Scn the affidavit "would never see the light of day." Flynn pointed out to GA the clauses concerning his release of all claims against Scn to date and its release of all claims against GA to date and said that they were the essential elements of the settlement and were what Scn was paying for. (CT 6912,3; 6127; 5901; SS 116; CT 8509)

Flynn told GA that everyone was sick of the litigation and wanted to get on with their lives. Flynn said that he was sick of the litigation, the threats to him and his family and wanted out. He said that as a part of the settlement he and all co-counsels had agreed to not become involved in organization-related litigation in the future. He expressed a deep concern that the courts in this country cannot deal with Scn and its lawyers and their contemptuous abuse of the justice system. He told GA that if he didn't sign the documents all he had to look forward to was more years of harassment and misery. Another client in the room with Flynn and GA during this discussion yelled at GA, accusing him of killing the settlement for everyone, and saying that everyone else had signed or would sign, and everyone else wanted the settlement. Flynn said that Scn would only settle with everyone together; otherwise there would be no settlement. (SS 1C, 1D, 1E, CT 8420,1; CT 6913; 6127,8; 5902) Flynn said that he had to get out of the fight, that he had done enough, that he had paid his dues, that Scientology had ruined his marriage, his wife's health and his life. (CT 5902)

Flynn told GA that a major reason for the settlement's global form was to give Scn the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. Flynn said that Scn's willingness to pay substantial sums of money, after its agents and attorneys had sworn for years to pay his clients "not one thin dime" was evidence of a philosophic shift within the organization. GA told Flynn that the SA evidenced the unchanged philosophy of fair game, and that if Scn did not use the opportunity to transform its antisocial nature and actions toward its members, critics and society he would, a few years hence, because of his knowledge of Scn fraud and fair game, be again embroiled in its litigation and targeted for extralegal attacks. (SS 98, CT 8487; CT 6913,4; 6128; 5902)

GA had been positioned as a deal-breaker, with all the other settling parties depending on his signing in order to have the fair game cease. He reasoned that if he signed, his co-litigants, some of whom he knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. Flynn and the other lawyers would be happy and the threat to them and their families would be removed. Scn would have the opportunity they said they desired to clean up their act and start anew. GA would have the opportunity to get on with his life and the financial wherewithal to do so. He was also not unhappy to at that time not have to testify in all the litigation nor to respond to the media's frequent questions. He knew that if Scn continued its fair game practices toward him he would be left to defend himself; so, armed with Flynn's advice that the SA conditions he found so offensive were not worth the paper they were printed on, and the knowledge that Scn's attorneys were also aware of that legal opinion, GA put on a happy face and the following day went through a videotaped signing, which he saw as a charade. (CT 6914,5; 6129,30; 5902)

C. From Settlement to First Response

It was GA's understanding and intention at the time of the settlement that he would honor the silence and confidentiality conditions of the SA, and that Scn had agreed to do likewise. (CT 6916) GA delivered to Scn the evidence he had accumulated in his case, released to Scn the documents held by the LASC, and agreed to the sealing of the Court file. (CT 123,4; 5925; 5940) After the settlement, GA got on with his life, did many usual or unusual things including pursuing religious studies, left Scn alone, and did not speak publicly about Scn or his experiences. (CT 6997-7000; 5902,3)

Scn, however, could not leave GA alone but continued to disseminate falsehoods about him publicly, and file false statements about him in legal proceedings. He perceived that he was still fair game, yet for 3 years, although saddened by the attacks, he did nothing in response. These fair game attacks after December, 1986, but prior to any acts by GA which Scn claims are breaches of the SA, include at least: delivering DA Documents (black PR) on him

to various media representatives; publishing Scn's own false descriptions of his experiences; disseminating to the media an edited, misleading and defamatory version of the secret and illegal videotape its agents made of him; disseminating his own documents which had been sealed on Scn's insistence in Armstrong I; filing affidavits about him in a civil lawsuit in England (Scientology v. Miller & Penguin Books, High Court of Justice, London, England, Case No. 1987 C 6140) which falsely charged, inter alia, that GA violated court orders and was an admitted agent provocateur of the US Government; threatening him with being sued if he even talked to attorneys in the Miller case in which the false charges about him were being made; threatening to expose a private writing if he did not assist Scn's effort to prevent a civil litigant, Bent Corydon, from obtaining access to the Armstrong LASC case file; threatening him with being sued if he testified about his Scientology experiences even pursuant to a subpoena. (SS 105A-H, CT 8491-3; CT 6916-9; 5931-46; 5903,4; Excerpts DA document, CT 6007-10; videocassette face, Missing; Affidavits of Kenneth Long, CT 6011-69 (first page missing); CT 6072-102; Affidavit of Sheila Chaleff, CT 6060,1; GA 1977,8 wage and tax statement, CT 6028; GA Affidavit, CT 6029; Nondisclosure and Release Bond, CT 6030; GA Deposition Transcript, CT 6031-43; GA Affidavit, CT 6087-102; CT 5926-8; 5943,4; 6919; 5970; 5904; 6135,6; GA Declaration, CT 6219,30). In 1987 Scn also filed in one of its cases with the IRS the affidavit it had required GA sign as part of the settlement, in direct violation of the promise it made through Flynn to only use the document if GA attacked it. (CT 6138,9; IRS Final Adverse Ruling re Church of Spiritual Technology, 7/8/88, CT 6241-3; CT 5903)

In October, 1989 GA was served with a deposition subpoena by plaintiff in the case of Bent Corydon v. Scientology, LASC No. C694401. (CT 5925; Subpoena, CT 5990-4). Shortly afterward he was called by Scn attorney Lawrence Heller, with whom he had three telephone conversations over the next month. In these conversations Heller threatened that GA could be sued if he testified, even though he had been subpoenaed, and that he should refuse to answer the deposition questions put to him by Corydon's attorney. Heller offered to have Scn pay for a lawyer to represent GA at the

deposition. Heller requested GA to execute a declaration to assist Scn in preventing GA's deposition from going forward, and threatened that GA would have hassles if the deposition did go forward. Heller also stated to GA that he should honor the SA because Scn had honored it. Heller said that Scn had signed a non-disclosure agreement as well and had lived up to it. GA told Heller that Scn had filed declarations about him, put out dead agent documents on him, and used the illegal videotape. GA made notes of the conversations with Heller and recorded his side of the final conversation. (CT 5925-8; 5943,4; Phone notes, CT 6227-37; Transcript, CT 6238,9; CT 5904; 6135-7; CT 6919; CT 6970; CT 5904; SS 105H, 8493,4; SS 103, CT 8490)

On November 1, 1990 Scn filed a motion in Corydon to delay or prevent the taking of certain third party depositions, one of whom was GA. (CT 5995-6006) The motion and supporting declaration were signed by attorney Heller who stated that he was personally involved in the settlements. (Heller Declaration, CT 6002) Heller stated in the motion:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (Underline in orig.) (SS 102, CT 8489,90; CT 5998)

Heller stated in his declaration:

> "The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (SS 101, CT 8488,9; CT 6003)
>
> "The contractual non-disclosure provisions were the one issue which was not debated by any of the parties or attorneys involved." (CT 6003)

As a result of Heller's telephoned threats, which deeply troubled him, GA concluded that the SA and Scn's efforts to enforce it were acting to obstruct justice, and if he allowed himself to be intimidated by the threats he would be abetting that obstruction.

He concluded that he had a right, and even a duty, regardless of whatever the SA said, to not obstruct justice. He concluded that he could not avoid a confrontation with Scn, and only then responded to defend himself and to correct what he perceived were the injustices created by the SA and Scn's misuse and violations thereof. (CT 5928; 5930; 5940; 5945; 6919; 6970; 5904) Scn was given a period of years to cease fair game. GA and the other settling litigants had honored the agreements, removed themselves as threats and allowed Scn the opportunity to change its combative attitude and behavior. GA concluded that disclosure of Scn's attitude and behavior would relieve and ultimately eliminate fair game. (CT 6141,2)

When he researched his rights, responsibilities and how to proceed in response to Scn's threats and fair game, GA learned that through the intervening five years Scientology had been able to maintain its appeal from the 1984 Armstrong I decision, Scientology v. Armstrong, No. B025920, Second District, Division Three. GA petitioned for permission to respond in the appeal. The Court granted his petition, and also unsealed the SA, which he had filed as a sealed exhibit to his petition. (SS 106, CT 8494,5; CT 6919,20; 5904; Petition, CT 6113-8) At the same time GA also petitioned Division Four of the Second District for permission to respond in another appeal, Corydon v. Scientology, No. B038975, that Scn had taken from a 1988 LASC order granting Corydon's motion to unseal the Armstrong I court file. (Petition, CT 6119-22) Scn opposed GA's petition and he filed a declaration dated March 15, 1990, (CT 5925-6123) detailing many of the organization's post settlement threats and attacks and stating his position regarding the unenforceability of several conditions of the SA. (CT 6970,1) The Division Four Court granted GA's petition, and he filed a respondent's brief in both appeals, which were ultimately consolidated.

On July 29, 1991 the Court of Appeal affirmed the 1984 decision and judgment in Armstrong I (Scientology v. Armstrong, 232 Cal.App.3d 1060, 283 Cal. Rptr. 917.) The Court of Appeal stated:

> "These [Suppressive Person] "declares" subjected Armstrong to the "Fair Game Doctrine" of the Church which

permits a suppressive person to be "tricked, sued or lied to or destroyed...[or] deprived of property or injured by any means by any Scientologist." (Id. at 1067; 920) (SS 127, CT 8517,8)

In September, 1991 Scn filed a motion in the Court of Appeal to seal the record on appeal, (CT 6521-88) based in part on the assertion that "an integral, indispensable part of that [Armstrong I] settlement was the sealing of the court's records." (CT 6529) GA filed an opposition to the motion to seal (CT 6589-902) in which he stated that "[t]he superior rights regarding the materials plaintiffs want sealed are those of defendant whose safety from attack rests in part on the availability of information and the openness of court files, and those of the public who have a Constitutional right to precisely the kind of information these materials contain." (CT 6592). The Court of Appeal denied Scn's motion to seal the record. (CT 6903)

D. Fair Game After Armstrong's First Response

From the time GA petitioned the Court of Appeal, Scn has continued to fair game him without letup. These attacks include, but are not limited to: (SS 107A-L, CT 8495-503; CT 5913-4)

o Disseminating to the media dead agent packs of black PR on him which provide Scn's false version of his experiences and include at least the following lies:

- he testified falsely at trial in 1984 (Scn DA Docs re GA and Judge Breckenridge, CT 7527; 7533; 7600; 7605)

- he "has adopted a degraded life-style (CT 7528; 7600)

- he was "apparently naked" in a newspaper photo (CT 7528)

- he is connected to Cult Awareness Network, hereinafter "CAN," described by Scn as "a referral agency for those who engage in the illegal activity of kidnapping adults for the purpose of forcibly persuading them to abandon their religious beliefs" (CT 7528)

- his defense at his 1984 trial "was a sham and a fraud" (CT 7528,9; 7614)

- the LAPD "authorized" [Scn's] videotapes of GA (CT 7529; 7615)

- GA wanted to plant fabricated documents in Scientology files

and tell the IRS to conduct a raid (CT 7529-31; 7609; 7615,6)

- he wanted to plunder Scientology for his own financial gain (CT 7530)

- he never intended to stick to the terms of the SA (CT 7532; 7617)

- his motives in writing attorney Eric Lieberman regarding the case of Malcolm Nothling v. Scn, in South Africa were money and power (CT 7533; GA letter, 6/21/91, CT 7482-98)

- he was incompetent as a researcher on the Hubbard biography project (CT 7533; 7622)

- he wanted to orchestrate a coup in which members of the US Government would wrest control of Scn (CT 7531; 7616)

o Using transcripts and other documents to attack him which Scn itself has insisted be sealed (CT 7537-97; 7533; 7534; 7610; 7616; 7623)

o Publishing black PR on him without stating its source which provide Scn's false version of his experiences and include at least these false and/or perverted charges:

- he was formerly a heavy drug user (Scn publication "FACTNet," CT 7514)

- he was paid to provide homosexual sex (CT 7514)

- a Marin Independent Journal photo showed him in the nude holding the globe (CT 7514; Marin IJ article 11/11/92, CT 7184)

- he is a psychotic and lives in a delusory world (Scn publication "FACTNet," CT 7520)

o Scn director Michael Rinder wrote a letter to the Mirror Newspaper Group in London, United Kingdom in which he stated that GA "has now distinguished himself by posing naked in a newspaper" (Rinder letter, 5/9/94, CT 7524)

o Scn President Heber Jentzsch wrote a letter, sent with documents about GA, to E! Television in which he stated that GA "has no relation to art or artists...except, of course, for the photo of himself, nude, hugging the globe (Jentzsch letter 8/5/93, CT 7693)

o Scn agent Eugene Ingram spread the lie that GA has AIDS (CT 5916; 8226,7; Videotape taken by Ingram of GA at November, 1992 CAN Convention, CT 8242; Notice of Lodging Videotape, CT 8676,7))

o Scn agent Garry Scarff was briefed by Ingram to expand on the [invented] "fuck buddy" relationship between GA and attorney Ford Greene (Scarff declaration, 2/11/93, CT 7510)

o Filing declarations and other documents in various courts containing false charges, and then using the SA to prevent GA from responding or to punish him for responding (Declaration of David Miscavige, 2/8/94, filed in Scientology v. Fishman, USDC Cen. Dist. Cal. No. 91-6426 HLH, CT 7655,6; CT 5580-93; 5624-39; Scn's Second Amended Complaint herein, CT 5356,7; Scn's motion for summary adjudication of 13th, 16th, 17th & 19th causes of action, 3/17/95, CT 5312,3; Scn's separate statement in support of motion for summary adjudication, 2/23/95, CT 4524.44 CT 9789) (Scn's Supp. Memo. in Support of Motion to Dismiss, 8/26/91, filed in Aznaran v. Scientology, USDC Cen. Dist. Cal. No. 88-1786 JMI, CT 6682-6; Declaration of Sam Brown, 8/26/91, CT 6714,5; Declaration of Lynn Farny, 8/26/91, CT 6725-7; Reply in Support of Motion for Summary Judgment, 8/26/91, filed in Aznaran, CT 6797-9; GA Declaration, 9/3/91, CT 6802-12; CT 4524.36; CT; CT 9787)

o Attempting to have Armstrong jailed for contempt of court based on mischaracterization of his actions and manufactured actions (Scn's Ex Parte Application herein for OSC re Contempt, 12/31/92, CT 7121-84; GA Declaration, CT 7406,7; Scn's evidence, GA declaration, 2/2/93, CT 5016-44; Scn's Ex Parte Application for OSC re Contempt, 7/26/93, CT 1628-739; Order of Judge Diane Wayne herein discharging OSC, 7/29/94, CT 7499-501)

o Providing documentation to Premiere magazine about GA, including partial transcripts of the illegal Ingram videotaping of him and then using the settlement agreement to punish GA for responding (Article "Catch a Rising Star, 9/93, CT 7672; GA letter, 10/11/93, CT 4811-4; CT 4524.48; Scn's motion for summary adjudication of 20th cause of action, CT 4524.11; CT 9790)

o Providing a press release to the Marin Independent Journal concerning the Court's 1/27/95 ruling, which discusses GA's Scn experiences and contains the false statement that he "promised [in the SA] to refrain from spreading falsehoods about [Scn];" and then using the settlement agreement to punish GA for responding; (Scn press release from Nancy O'Meara and Andrew H. Wilson, 1/95, CT

7692; GA letter to O'Meara, CT 5056; CT 4524.17,8

o Secretly videotaping him (GA letters, 8/21/91, 8/22/91, CT 6834-9; CT 6714)

E. Armstrong's Actions

In August, 1990, GA was in a new home he had purchased in Marin County, and living his life. (CT 6998-7000) Although still a troubled target of fair game, he considered himself free of the SA's restrictions, not only because of what Flynn had told him at the time of the settlement, but because of Scn's post settlement attacks and the SA's unenforceability due to its obstruction of justice. (CT 6972; 5928; 5930; 5940; 5945) Then the Iraqi army invaded Kuwait, and his life was again forever changed. Moved by media reports of the invasion, the global tension, and the daily events of Desert Shield, GA prayed for guidance concerning humanity's condition, and specifically the then developing Middle East crisis. (CT 6988; 5905,6) GA received a message, which he believed came from God, saying: "Keep nothing. Give what you have to the poor. Take only what you need." (Message, CT 7204) The idea of renunciation of worldly wealth, although coming at that time as a surprise, and unclear as to the details for its accomplishment, was not altogether illogical to GA because he had long recognized that money, greed and power motivated much of the madness that made human beings war against each other. (CT 6988) He had already recognized the essential valuelessness of money in an essay he had written in 1989. (CT 7039-41) GA also recognized that Scn's leaders were motivated by the same forces of money, greed and power that made men war against each other and that his renunciation was spiritually directed at bringing peace for Scn no less than the rest of the world. (CT 7002) GA gave away his assets, including his ownership of The Gerald Armstrong Corporation, hereinafter "TGAC," his philosophic services company; his ownership of his home; forgave debts owed him; and determined to go wherever his help was asked for. (CT 7002; 5906) Over the next few months GA gave himself to resolving the Middle East crisis (CT 7095-103) but he was not successful and a quarter million people were killed.

In June, 1991 GA received a call from Malcolm Nothing, asking him to testify in his case against Scn in South Africa. Nothling

said he had not been able to find anyone else in the world willing to testify about Scn's policies and practices. After listening to Nothling's story, and because Nothling had asked, GA agreed to help him. GA said he first wanted to see if the situation could be resolved peacefully, and he wrote a letter to attorney Lieberman, who represented Scn in the Armstrong I appeal. (CT 7482-98) Scn rejected GA's peace proposal, so he flew to South Africa and helped Nothling, but did not testify as the trial was postponed. (CT 7004; 5906) (SS 21-2, CT 8438,9)

Before leaving for South Africa, GA received a call from attorney Joseph Yanny, asking for GA's help in the Aznaran case. Yanny told GA that he had come into the case after the Aznarans had been tricked by Scn into firing their attorney Ford Greene. GA travelled to Los Angeles and wrote a declaration concerning the unjust effect of the 1986 "global settlement" on litigants against Scn and in the legal community, and helped Yanny with moral support and matters of the soul. (CT 7005; 5906)

As GA was leaving for South Africa he learned from Yanny that Scn had sued Yanny for allegedly inducing GA to breach the SA. In response, GA wrote a declaration in which he stated his philosophy regarding his calling to help. (GA Declaration, 7/19/91, CT 6740-9)

> "But more than a desire to protect myself or right the organization's unjust acts towards me, however, I helped Mr. Yanny for the simple reason that he asked. I will do the same for anyone....It is not only the right of all men to respond to requests for help, it is our essence. If I was induced, therefore, to help Mr. Yanny, or anyone else, it was our Creator Who induced me." (CT 6747)

In its lawsuit, Scientology v. Yanny, LASC No. BC 033035, Scn claimed that Yanny, who had formerly represented Scn, was representing GA in Scn-related litigation. Yanny had never represented GA in any litigation and GA had never consulted Yanny about his Scn legal battle. Scn's complaint was ultimately dismissed. (CT 7005,6) Scn considers GA's declaration, provided by him in a case in which an attorney was falsely sued for representing him, a SA violation. (CT 4524.8; 4524.37,8; 9787,8) (SS 17-20, CT 8436-8)

Upon his return to the US GA received the complaint Scn filed against 17 IRS agents, Scientology v. Xanthos, et al., USDC Cen. Dist. Cal. No. 91-4301-SVW, which contained the allegation that:

> "The infiltration of the Church was planned as an undercover operation by the LA CID (Criminal Investigation Division of the IRS) along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could seize in a raid. The CID actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all Church documents to the IRS for their investigation." (Xanthos, complaint, 8/12/91, CT 6636)

Although GA had seen this attack line in many forms and venues since 1985, this 1991 charge signaled to him that the organization was not about to peacefully end its legal and psychological war in which he knew he was one of its most hated enemies. (CT 7007,8)

Within a few days GA went by Ford Greene's office, which was near his residence in San Anselmo in Marin County. Greene, who was one of few attorneys willing to take cases on behalf of Scn's victims, had been reinstated as counsel in Aznaran. GA saw that Greene was facing several summary judgment and other motions Scn had filed in the case when the Aznarans were lawyerless, had no time, staff or other resources, and truly needed GA's help. (CT 7006,7; 6811,2) GA worked for Greene as his sole office assistant from August, 1991 until, except for a three week period, December, 1995. (CT 5907) Throughout those years Scn tried continuously to prevent GA from working with Greene. (See, e.g., CT 6804-12; 7508; 7510,1; 7131-3; Complaint herein, CT 0009-10; Bartilson Declaration, 12/31/92, CT 7143-6)(SS 12-16, CT 8432-6)

F. Scientology's Enforcement Litigation

In October, 1991 Scn filed a motion in Armstrong I to enforce the SA. GA opposed the motion and on December 23, 1991, after a hearing, LASC Judge Bruce R. Geernaert denied it. Judge Geernaert stated regarding the SA:

> "So my belief is Judge Breckenridge, being a very careful judge....if he had been presented that whole

agreement and if he had been asked to order its performance, he would have dug his feet in because that is one .... I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that, okay the case is not settled.

I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (SS 120, CT 8510,1; Transcript of 12/23/91 hearing, CT 7700)

On February 4, 1992, Scn filed its verified complaint for damages and for preliminary and permanent injunctive relief for breach of contract, Marin SC No. 152229, hereinafter "Armstrong II." (CT 0001-12)On February 7, 1992 Scn filed a motion for preliminary injunction. (CT 0073-4). GA filed a motion to transfer the case to the LASC, which was granted March 20, 1992. (CT 75-80. The case was transferred and given LASC No. BC 052395. (CT 0081)

On April 14, 1992 Scn filed a renewed motion for preliminary injunction (CT 0082-4), a hearing on which was held May 26 and 27 before LASC Judge Ronald Sohigian, who on May 28, issued an order granting in part Scn's motion. He prohibited GA from:

"Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the [SA] regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating, or litigating a claim against the persons referred to in sec. 1 of the [SA].

"The Court does not intend by the foregoing to prohibit [GA] from (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in

response to questions in either deposition, at trial, or in other legal proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the [SA]; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

The application for preliminary injunction is otherwise denied." (Order 5/28/92, CT 0091-4)

GA appealed the grant of the preliminary injunction.

On June 4, 1992 Scn filed an amended verified complaint for damages and for preliminary and permanent injunctive relief for breach of contract. (CT 0095-115) On June 23, 1992 Scn filed an amendment to complaint, adding TGAC as Doe 1. (CT 0159) On July 22, 1992 GA filed his answer and a cross-complaint for declaratory relief, abuse of process, and breach of contract, (CT 0160-254). On October 8, 1992 he filed an amended answer and an amended cross-complaint. (CT 0255-333)

On December 31, 1992 Scn filed an application for an OSC why GA should not be held in contempt. (CT 0428-639) The OSC was signed by Judge Sohigian. (CT 640,1) The charged contempts were for a letter GA wrote to Scn leader David Miscavige (CT 0436,7; GA letter, 12/22/92, CT 0525-34) a discussion with the Aznarans; signing 2 proofs of service in their case (CT 0438,9; Proofs of service, CT 0567-70); "assisting" Greene clients Tillie Good, Denise Cantin and Ed Roberts (CT 0439-40); and making a videotape discussing his Scn experiences. (CT 0440-2) GA filed his opposition to the OSC, and various supporting declarations and other documents. Scn filed a motion in limine to exclude Scn's prior acts, and various other documents relating to the OSC. (CT 0644-1268) On March 5, 1993 a hearing was held before LASC Judge Diane Wayne, who ruled that because the 5/28/92 order was on appeal, she would not proceed. Judge Wayne stated during the hearing:

"I have some serious questions about the validity of the order." (Transcript, CT 1410)

"I'll tell you, when I first looked at this order, I thought the order was clear until I read part of the

transcript. Then it became unclear to me." (CT 1414)

On March 17, 1993 GA filed an application to stay proceedings (CT 1269-86) based on his appeal of the 5/28/92 order, which Scn opposed. (CT 1297-394) On March 23, 1993 LASC Judge David A. Horowitz granted the motion. (Order, CT 1596)

On July 26, 1993 Scn filed a second application for an OSC re contempt. (CT 1628-739) The charged contempt was for providing a declaration of Lawrence Wollersheim in the case of Scientology v. Wollersheim, LASC No. BC 074815. (CT 1629; 1634,5; GA declaration, 6/4/93, CT 1686-90) On July 26, 1993 GA filed his opposition to the application. (CT 1740-98) The OSC was signed by Judge Wayne. (CT 1601,2) On September 7, 1993 GA filed an opposition to the OSC (CT 1800-98) and on September 10, Scn filed its response. (CT 1905-1932)

On July 8, 1993 Scn filed a verified complaint for damages and for preliminary and permanent injunctive relief for breach of contract, LASC No. BC 084462, hereinafter "Armstrong III." All the documents filed in this case are missing. On August 27, 1993 the LASC ruled that Armstrong II and Armstrong III were related cases. (CT 1799) On September 14, 1993, GA filed a special motion to strike the Armstrong III complaint pursuant to the SLAPP Statute. On September 29 Scn filed an opposition, and on October 4, GA filed a reply. On October 6 Judge Horowitz entered an order consolidating Armstrong III with II and staying the action. On February 10, 1994 Scn filed a motion to vacate the stay, GA filed an opposition, and on March 14 Judge Horowitz entered an order denying the motion.

On July 23, 1993 Scn filed a verified complaint to set aside fraudulent transfers and for damages; conspiracy, Marin SC No. 157680, hereinafter "Armstrong IV," against GA, TGAC and Michael Walton. (CT 3071-86) Walton was GA's friend and part owner of the Marin house to whom GA had transferred his ownership in August, 1990 at the time of his epiphanic renunciation. Scn charged that GA had given Walton the house to make himself judgment proof in order to prevent Scn from collecting on liquidated damages for GA's planned breaches of the SA. That case, now part of the consolidated case with the same number, Marin SC No. 157680, was not disposed of by summary judgment, and remains to be tried. Walton filed an

answer in Armstrong IV on November, 29, 1993 (CT 3102-7), and GA and TGAC filed answers on November 30. (CT 3108-3155)

On April 5, 1994 Scn filed in Armstrong II its verified second amended complaint. (CT 1933-2037)

On May 16, 1994 the Court of Appeal, Second District, Division Four issued its opinion affirming the 5/28/92 preliminary injunction order. (CT 2040-50) The Court stated:

> "We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction." (CT 2048)
>
> "This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement." (CT 2049)

On June 15, 1994 Scn filed a motion for summary adjudication of the second and third causes of action of the cross-complaint. (CT 2080-249) The second cause of action is abuse of process; the third is breach of contract. On July 20 GA filed his opposition, (CT 2251-533) and on July 26 Scn filed its reply. (CT 2589-689) On August 16 Judge Horowitz granted Scn's motion for summary adjudication, ruling as to breach of contract that the SA did not prohibit Scn from referring to GA in the media, legal proceedings or declarations. (CT 3019-21)

A hearing was held on Scn's orders to show cause re contempt before Judge Diane Wayne on July 28, 1994. On July 29 she issued an order discharging the OSC and GA, ruling that GA's "assistance" in Ford Greene's office was permitted "ministerial" conduct, that providing Wollersheim with a declaration was permissible as Wollersheim was a defendant in the relevant litigation, and that GA's 12/22/92 letter did not assist in litigation. (CT 2690-2)

On September 1, 1994, pursuant to stipulation, Armstrong II

was transferred to Marin County. (CT 3023-5) Pursuant to a joint application for consolidation filed September 12, 1994 (CT 3156-69) Marin SC Judge Gary W. Thomas consolidated Armstrong II, III and IV into one case, Marin SC No. 157680. Scn filed an amendment substituting Solina Behbehani-Walton, Michael Walton's wife, as Doe 2. (CT 3170,1) On January 5, 1995 Mrs. Walton filed her answer. (CT 3667-71)

On November 16, 1994 Scn filed its motion for summary adjudication of the fourth, sixth and eleventh causes of action of plaintiff's second amended complaint. (CT 3172-3665) On January 13 GA filed his opposition. (CT 3875-4076; 4097-4224) The fourth cause of action concerns GA's providing the Aznarans with a declaration (CT 3184,5); the sixth concerns GA's giving an interview to CNN TV and American Lawyer magazine; and the eleventh concerns GA's providing a declaration to defendants in Scientology v Scott, USDC No. CV 85-711 JMI and 85-7197 JMI (CT 3185,6). On January 19 GA filed a supplemental declaration, along with evidence (CT 7400-504), providing his conviction that what Scn was seeking to prevent him from saying was religious expression which was above legal prohibition. (CT 7400-7) Judge Thomas struck the declaration as it was filed late. On January 20 Scn filed its reply. (CT 4077-96) A hearing was held January 27. (Reporter's Transcript on Appeal, hereinafter "RT," V. 1, 1-15)

Judge Thomas granted Scn's summary adjudication motion as to the fourth and sixth causes of action and denied it as to the eleventh. In his order he stated in part:

> "As to all causes of action, defendant fails to raise a triable issue as to whether the liquidated damages provision is invalid. [] The law now presumes that liquidated damages provisions are "valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made." (Civ. Code, §1671, Subd (b).) Defendant's evidence is not sufficient to raise a triable issue in that regard. Although defendant states in his declaration that he was not involved in negotiating the provision [] he

goes on to say that he discussed the provision with two attorneys before signing the agreement. [] Thus he clearly knew of the provision yet chose to sign it. He has not shown that he had unequal bargaining power or that he made any efforts to bargain or negotiate with respect to the provision. [] Defendant next states that plaintiff's actual damages are zero []. However, "The amount of damages actually suffered has no bearing on the validity of the liquidated provision.." [] Finally defendant points to the fact that other settlement agreements contain a $10,000 liquidated damages provision. [] This alone is not sufficient to raise a triable issue that defendant has not shown that circumstances did not change between 12/86 and 4/87 and that those settling parties stand in the same or similar position to defendant (i.e., that they were as high up in the organization and could cause as much damage by speaking out against plaintiff or that they have/had access to as much information as defendant).

"Defendant also has not raised a triable issue regarding duress. Defendant's own declaration shows that he did not execute the agreement under duress in that it shows he carefully weighed his options. It certainly does not show that he did something against his will or that he had "no reasonable alternative to succumbing." [cite] In addition, defendant is relying on the conduct of a third party (Flynn) to establish duress, yet he sets forth no fact or evidence in his separate statement showing that plaintiff had reason to know of the duress.

"Defendant fails to raise a triable issue regarding obstruction of justice/suppression of evidence. The settlement agreement expressly does not prohibit defendant from disclosing information pursuant to subpoena or other legal process. [cite] Nor is plaintiff in this cause of action seeking to prohibit disclosure to government agencies conducting investigations pursuant to statutory obligations. [cite]. Even if a portion of the

agreement could be construed to so prohibit (see e.g., ¶10), plaintiff is not relying on that section. Nor has defendant shown that the provision is so substantial as to render the entire contract illegal. [cite]" (Order, CT 4236-9)

On February 23 Scn filed a motion for summary adjudication of the twentieth cause of action. (CT 4244-5234) In its twentieth cause of action Scn sought a permanent injunction prohibiting GA from violating any provisions of the SA. (CT 1963; Memorandum in support of motion for summary adjudication, CT 4524.21,2)

On March 17 Scn filed a motion for summary adjudication of the thirteenth, sixteenth, seventeenth and nineteenth causes of action. (CT 5298-661) The thirteenth cause of action concerned a videotape interview GA gave at a CAN conference in 1992 (CT 1951,2); the sixteenth concerned GA's being interviewed by Newsweek magazine (1953,4); the seventeenth concerned GA's being interviewed by Entertainment Television; the nineteenth concerned GA's providing a declaration dated 2/22/94 to be filed in the Scn v. Fishman case. (CT 1957,8)

On April 19 GA filed a notice Chapter 7 Bankruptcy (USBC, Nor. Dist. Cal. No. 95-10911) and imposition of automatic stay. (CT 5850-2) On April 21 Judge Thomas stayed the state action. (CT 5853)

Scn brought an adversary proceeding in the Bankruptcy Court (Scientology v. Armstrong, USBC, Nor. Dist. Cal. No. 95-1164) which resulted in the stay being lifted. (CT 5855) On September 18 GA filed his opposition to Scn's motion for summary adjudication of the twentieth cause of action, and his opposition to the motion for summary adjudication of the thirteenth, sixteenth, seventeenth, and nineteenth causes of action. (CT 5871-8553)

On September 20, Scn filed an ex parte application for an order sealing certain exhibits in GA's evidence, claiming that they were trade secrets. (CT 8579-8598) GA filed an opposition (CT 8554-77; 8599-617) Judge Thomas sealed certain of those exhibits pending the hearing on Scn's motions. (CT 8618,9) On September 25 Scn filed a reply in support of its summary adjudication motions. (CT 8620-45) A hearing was held October 6. (RT V. 2, 2-17)

Judge Thomas issued an order granting Scn's motions for

summary adjudication. (CT 8679,80) He stated:

"Invalidity of Liquidated Damages Provision: Defendant's evidence regarding his attorney's failure to represent his interests (see facts 43 and 68) is hearsay and/or not based on personal knowledge. The opinion of defendant's attorney as to the validity of the provision (see, e.g., facts 52-54, 57-60) is irrelevant and hearsay. The fact that two other clients signed a settlement agreement containing the same liquidated damages amount (see facts 55-56 and 63-64) does not raise an inference that the provision was unreasonable. Defendant's evidence is insufficient to raise a reasonable inference of unequal bargaining power (No personal knowledge shown that plaintiff, as opposed to Flynn, positioned defendant as a "deal breaker"; Flynn's statements hearsay; no personal knowledge shown of plaintiff's wealth; wealth alone does not raise inference of unequal bargaining power since no showing defendant desperate for money and had to accept on plaintiff's terms). Defendant's evidence does not raise an inference that plaintiff's calculation is "unfathomable" (fourteenth cause of action seeks $50,000 for each of 18 letters; nineteenth cause of action is based only on declarations, not on other contacts between defendant and attorney/other clients). Defendant fails to establish how he knows plaintiff had not been injured by his statements at the time of the settlement.

Duress: Flynn's statements to defendant are hearsay. (See, e.g., D's facts 1C and 1D) Further defendant has now shown that plaintiff was aware of Flynn's purported duress of defendant. [cite] Contrary to defendant's statement about duress, "careful weighing of options" is completely inconsistent with an absence "of free exercise of his will power" or his having "no reasonable alternative to succumbing." [cites]

Fraud: Flynn's statements to defendant (See fact 78) are hearsay. The Court finds that the portions of the

agreement cited by defendant (see facts 79 and 80) do not establish a mutual confidentiality requirement. Paragraph 7(I) only prohibits the parties from disclosing information in litigation between the parties; paragraph 18(D) only prohibits disclosure of the terms of the settlement; defendant has not shown that plaintiff did either of those things. Further, "something more than nonperformance is required to prove the defendant's intention not to perform his promise." [cite]

No Specific Performance,Breach of Express and Implied Covenant: Defendant relies on the purported mutuality requirement, which he has failed to establish.

Obstruction of Justice: This argument was rejected by the Court in connection with plaintiff's first summary adjudication. (See 2/22/95 Order at ¶6.)

First Amendment: First Amendment rights may be waived by contract. [cite]

On October 17, 1995 Judge Thomas signed Scn's order of permanent injunction. (CT 8685-93)

On October 26 Scn filed a motion for summary adjudication of the first cause of action for declaratory relief in GA's cross-complaint; severance of the fraudulent conveyance claim; dismissal of unadjudicated breach of contract claims; and entry of final judgment. (CT 8694-927) On November 17 GA filed his opposition (CT 9218-362), and on November 27 Scn filed its reply. (CT 9453-65)

On November 2 GA filed a motion for reconsideration of the grant of summary adjudication as to twentieth cause of action for permanent injunction, (CT 8928-9045) and on November 16 an amended motion for reconsideration. (CT 9046-217) GA filed under seal his evidence previously stricken in Judge Thomas's 10/5/95 order. (CT 9218-20) On November 22 Scn filed its opposition to the motion for reconsideration. (CT 9364-452) On November 29 GA filed his reply. (CT 9466-519) A hearing was held December 1. (RT V. 2, 18-27)

Judge Thomas issued an order denying GA's motion for reconsideration, and granting in part Scn's motion for summary adjudication. (CT 9521,2)

On January 24, Judge Thomas signed an order granting Scn's

motion to sever the fraudulent conveyance action, dismiss the remaining breach of contract causes of action, enter final judgment, and adjudicate Scn the prevailing party. (CT 9652-6)

On January 24, 1996 Scn filed a renewal motion for summary judgment of GA's cross-complaint. (CT 9526-642) On February 23 GA filed his opposition (CT 9677-772) and on February 26 an amended opposition. (CT 9749-9778.1) On March 1 Scn filed its reply. (CT 9773-8.1) A hearing was held March 8. (RT V. 1, 26-38) Judge Thomas issued an order granting Scn's motion for summary judgment on GA's cross-complaint.(CT 9780)

On May 2, 1996 the Court entered its Judgment. (CT 9783-94)

On July 8, 1996 GA filed his notice of appeal.

III. ARGUMENT

A. There is a Triable Issue as to Duress

In his January 27, 1995 order on Scn's first summary adjudication motion of certain causes of action of its complaint, Judge Thomas stated, regarding GA's defense of having signed Scn's SA because of duress, that GA's own declaration shows that he did not execute the agreement under duress in that it shows he carefully weighed his options. Judge Thomas also stated that GA relied on the conduct of attorney Flynn, a third party, to establish duress, yet provided no evidence showing that plaintiff had reason to know of the duress. (CT 4236-9)

In his opposition to Scn's second summary adjudication motion of its complaint GA provided evidence of Flynn's being fair game and a target of many Scn attacks from 1979 until the settlement. (SS 1B, CT 8418-20) In that Scn was the source of the attacks which included some 15 lawsuits, bar complaints and framing with a check forgery, it is obvious that Scn knew of at least that aspect of the duress on Flynn. Scn also knew of all its own acts of fair game directed at GA up to that time, and at all the other settling parties. It goes without saying that the purpose of fair game in its many forms is to apply duress in its many forms to its designated targets. GA filed as part of his evidence declarations by several individuals who had knowledge of fair game. (Hana Whitfield, CT 7780-7887; see, e.g., 7788-91, 7808-27; Dennis Erlich, CT 7888-99 at 7891; Margery Wakefield, CT 7900-41 at 7903;

Keith Scott, CT 7942-52 at 7945; Malcolm Nothling, CT 7953-9 at 7955, 7958; Jonathon Atack, CT 7960-8038, at 7962-4, 7977-80; Nancy McLean, CT 8939-49 at 40,1; Lawrence Wollersheim, CT 8052-216 at 8053-59, 8074-212)

That Flynn, GA and the other settling individuals were targets of fair game is also shown in the "settlement agreement" between Flynn and his clients, wherein is stated:

> "We the undersigned, agree and acknowledge that many of the cases/clients involved in this settlement...have been subjected to intense, and prolonged harassment by the Church of Scientology throughout the litigation... that [Flynn] or his firm's members have been required to defend approximately 17 lawsuits and/or civil/criminal contempt actions instituted by the Church of Scientology against him, his associates and clients, that he and his family have been subjected to intense and prolonged harassment..." (CT 5486,7)

The idea that duress applied by a third party to a person to get him to sign a document cannot be ascribed to the party seeking the person's signature is not supported by common sense. If an agent of a corporation holds a gun to the head of an attorney's wife, and the attorney tells his client he must sign the corporation's document or the attorney's wife will be killed, although the corporate agent doesn't know what the attorney says to the client, the agent and his corporation are still the source of and responsible for the duress on the attorney's client. In this case, the threat of Scn continuing fair game to Flynn, his wife, family, law firm and clients was the gun held to all their heads. That Scn was holding its fair game gun to everyone's head was the communication Flynn relayed to GA to get him to sign Scn's document.

The nature of the SA itself is also an inference of duress since what attorney, but one under tremendous duress, would have his client sign such a document, knowing intimately the history of fair game by the organization who concocted it. It is clear that Flynn had, before presenting Scn's SA to GA, already agreed to sign a contract to not represent or defend GA if GA was attacked in the

future. Such a contract is illegal. What attorney, one as competent as Flynn, would allow his client to be so exposed and defenseless to future attacks, except an attorney under duress, or one thoroughly corrupted. There is too much evidence of duress to believe that Flynn was just corrupt.

The duress at the time of the settlement, contrary to how it might be viewed at first glance, is actually demonstrated by Scn's continuing to fair game GA afterward. Tricking and lying to a designated target are parts of the basic fair game doctrine. CT 6934; SS 1A, CT 8412) Scn tricked GA into signing its document by lying about ceasing its attacks. This was acceptable Scn tactics because GA is designated an SP and hence fair game.

Duress is also evidenced by Flynn's communications to GA throughout this litigation. Flynn has continually told him that he would like to help GA but that he is afraid to. Flynn signed a SA with Scn as well, and has refused to come forward throughout this litigation, despite telling GA that he "would be there for [him]" if he had any trouble with Scn after the settlement. (GA Declaration, 7/20/94 CT 2298) GA filed a declaration executed April 7, 1995 stating what Flynn would testify to if he were released by Scn from its contract with him. (CT 7678-83) Contracts which limit an attorney's ability to practice or limit his clients are illegal.

In his order of October 6, Judge Thomas stated again that GA had not shown that Scn "was aware of Flynn's purported duress of defendant." (CT 8679) That is not the issue; the issue is Scn's duress of Flynn, GA and everyone else involved. What Flynn stated to GA may be hearsay, but what Scn did over its years of attacks on Flynn and GA, and what it would continue to do if GA didn't sign is the source of the duress.

Judge Thomas stated that "careful weighing of options" is completely inconsistent with an absence "of free exercise of [GA's] will power" or his having "no reasonable alternative to succumbing." That cannot be true. A person with a gun at his head may weigh his options just as carefully as a person with free exercise of his will. His options are, however, radically different. In this case, GA's options were either sign Scn's document or have Scn continue to threaten and attack his attorneys,

their families, the 20 other people who wanted out from the threats and attacks, and himself. Also included in GA's weighing of his options was Scn's promise through Flynn that it would cease all its fair game activities against everyone. Flynn's statements to GA that the SA's prohibitions were not worth the paper they were printed on and unenforceable, although perhaps ultimately true, are also reflective of duress, and were also part of GA's weighing of his options. Some people carefully weigh things; some people don't. It is the nature of the options being weighed, carefully or not, which is the true indicator of duress. Judge Thomas did not examine GA's options. These are options which must be examined by the trier of fact.

B. There is a Triable Issue as to Fraud

GA has stated throughout this case that he intended to honor the silence and confidentiality conditions of the SA agreement and that he understood Scn was to do likewise. (CT 6916) Indeed Scn's being silent about him, and therefore ceasing to lie about him, was inherent in Scn's promise to cease all fair game activities, as relayed by Flynn. Scn has maintained throughout this case that it may say whatever it wants about GA publicly, and file whatever it wants in legal proceedings, and is not bound by any agreement to refrain from such acts. GA only began to speak out about Scn and his experiences after Scn published and filed false statements about him and he perceived that Scn was using his silence to obstruct justice.

In his opposition to Scn's second summary adjudication motion GA presented considerable evidence of Scn's promise of mutuality as an inducement to have him settle his cross-complaint. This included certain parts of the SA, notes of telephone calls from Scn attorney Lawrence Heller, and a motion and supporting declaration authored by Heller stating that confidentiality was mutual. (CT 5925-8; 5943,4; Phone notes, CT 6227-37; Transcript, CT 6238,9; CT 5904; 6135-7; CT 6919; CT 6970; CT 5904; SS 105H, 8493,4; SS 103, CT 8490)

In his order granting summary adjudication, Judge Thomas only commented on two of the SA parts, but did not mention Heller's telephone statements to GA or Heller's sworn statements. (CT 8680)

Judge Thomas stated that paragraph 18(D) only prohibits disclosure of the terms of the settlement. But Paragraph 18(E), which he did not take note of, states: "The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement." (SS 99, CT 8487,8) GA still believes that this means that Scn must forbear and refrain from publishing and filing anything about him, other than "stating that this civil action (Armstrong I) is settled in its entirety." (SA, 18(D), SS 99, CT 8487,8) If GA had understood that Scn's forbearing and refraining from acts inconsistent with the SA meant that Scn would publish or file whatever it wanted about him in the future, he would have, as he has said consistently throughout this case, never signed. It is clear that the SA was cleverly worded by clever lawyers, who were more clever than GA.

Judge Thomas also stated that "something more than nonperformance is required to prove the defendant's intention not to perform his promise." But GA presented a great deal more to prove Scn's representation of its intention, and to prove that there is a triable issue regarding both parties' intention.

In the fall of 1989 attorney Heller threatened GA with "hassles" if his deposition in the Corydon litigation went forward, and threatened him with being sued if he testified about his knowledge even though pursuant to a subpoena. In this conversation Heller told GA he should honor the SA because Scn had honored it, and that Scn had signed a non-disclosure agreement as well and had lived up to it. GA told Heller that Scn had filed declarations about him, put out dead agent documents on him, and used an illegal videotape of him. GA's notes of the Heller calls and his recording of his side of the final conversation support his declaration containing Heller's comments. (CT 5925-8; 5943,4; Phone notes, CT 6227-37; Transcript, CT 6238,9; CT 5904; 6135-7; CT 6919; CT 6970; CT 5904; SS 105H, 8493,4; SS 103, CT 8490)

In a motion he filed in Corydon to prevent GA's deposition, Heller stated:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, was

strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences with the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners." (Underline in orig.) (SS 102, CT 8489,90; CT 5998)

In his declaration Heller stated:

"The non-disclosure obligations were a key part of the settlement agreements insisted upon by all parties involved." (SS 101, CT 8488,9; CT 6003)

Heller also stated in his declaration:

"The contractual non-disclosure provisions were the one issue which was not debated by any of the parties or attorneys involved." (CT 6003)

Heller's statements make absolutely clear Scn's intention of mutuality as it was promised to GA to get him to sign its contract. The whole of Scn's litigation to enforce what it now claims is a non-mutual contract, in order to be able to further fair game GA, is something far more than mere nonperformance, and far more than what is required to prove Scn's intention not to perform its promise.

C. There is a Triable Issue as to Justification

Even, assuming arguendo, that the silence provision only applied to GA, and that Scn was not required by contract to remain silent about him, GA was still manifestly justified in speaking out as soon as Scn did.

Scn claims that it can say whatever it wants, no matter how false or injurious, and GA cannot respond. That is essentially what Judge Thomas has ruled in ignoring GA's defense of privilege. GA is justified in responding to protect his reputation, and indeed his life. This a matter for the trier of fact to decide and cannot be dispensed with on summary judgment.

Putting aside defenses and arguments of free speech, freedom of religion, freedom from slavery, due process and assembly, if Scn had remained silent about GA, saying no more than that the parties' litigation was settled in its entirety, and GA had gone public about his Scn experiences, conceivably Scn could have legally

enforced the SA.

If, on the other hand, Scn had accused GA of being a serial chain saw murderer; taken out a full page ad or a hundred full page ads, in the New York Times, in the Washington Post, and in Newsweek, all accusing him of being a serial chain saw murderer; bought a satellite, a daily hour on network TV, and produced a show called "Gerry Armstrong - Serial Chain Saw Murderer," it is inconceivable that GA could be judicially prevented from responding in the media, and to anyone who would listen, in order to defend his reputation; in order to show that he is not a serial chain saw murderer and to explain what entity is attacking him and why.

Somewhere between GA discussing his Scn experiences without Scn having said anything about GA, and Scn spending a billion to run its GA serial chain saw murderer black PR campaign, there is a line crossed where GA becomes justified in breaching his contract in order to defend his reputation, and his life. It is the line Judge Breckenridge recognized in the Armstrong I trial when he said that in 1982, GA, being the target of fair game, was "privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person." (CT 5952) In 1991, GA was no less fair game's target, and no less privileged to respond to Scn's attacks, even though his responses might be, absent Scn's attacks, breaches of contract.

That is a line for the trier of fact, in this case, a jury, to determine. It is a line involving a look at what a reasonable person would have done. It is a line involving a set of facts completely ignored by Judge Thomas in his grant of Scn's summary judgment. If GA's actions were reasonable, then a contract which prevents them must be unreasonable. It is indeed unreasonable that GA who had been fair game would continue to be fair game.

In truth, Scn's post-settlement attacks on GA are more vilifying, and call for a different, more complete response, than does a libel like GA being a serial chainsaw murderer. Scn gives its black PR titles like "False Report Correction," (CT 7598, 7612) makes it look authoritative by providing many "facts," (CT 7514,5) or presents it in the form of a sworn affidavit. (CT 6068) Scn's

statements about GA are black PR going beyond his Scn experiences; e.g., claiming falsely that he posed nude in a newspaper (CT 7514; 7524) or, also falsely, that he has AIDS. (CT 8242; 8676,7) These are matters to be examined by the jury to determining if GA acted reasonably in responding as he did, and whether first of all Scn crossed over the line.

Sadly, there is sometimes an assumption of guilt in the public mind when a charge is not responded to. There can be little doubt that Scn would use GA's failure to respond to its calumnies to further amplify the illusion of his guilt it manufactured in that public mind. No one can be compelled to respond to false charges made to the public, and it is the most courageous man who does not respond. But no one also can be prevented by human agency from responding to falsehoods, definitely not by our Courts. GA has been moved to respond, no matter how uncourageous or dangerous responding might be, so that this terrible injustice can be seen and stopped, and perhaps stopped from happening to others.

D. The Settlement Agreement Obstructs Justice

In his order granting Scn's first motion for summary adjudication Judge Thomas stated that there was no triable issue regarding obstruction of justice/suppression of evidence because the SA does not prohibit GA from disclosing information pursuant to subpoena or other legal process. (CT 4237) But the fact that the SA allows GA to testify pursuant to subpoena does not automatically mean that the SA does not have as its object obstruction of evidence. The facts of GA's relationship with Scn and other litigants, particularly Scn's litigant victims (see, e.g., CT 5486,7), and the facts of the uses to which Scn put the SA are essential to determining whether it obstructed justice. Thus an examination by the trier of fact is necessary.

Although instances of the SA acting to obstruct justice abound, one will serve to show that obstruction is its object. On February 8, 1994 Scientology leader David Miscavige, filed in the Scientology v. Fishman case, supra, a declaration (CT 7625.1-65) in which he attacked GA, claiming, inter alia, that GA advised people to falsely accuse Scn of criminal acts, that the IRS repudiated GA's credibility, and that in a police-sanctioned investigation GA

acknowledged his motives were to overthrow Scn leadership and gain control. (CT 7655,6) On February 22, 1994 GA executed a declaration correcting the falsehoods in Miscavige's declaration. GA's declaration was filed in Fishman March 9, 1994 as part of defendants' pending motion for costs. (CT 5579; 5646) GA appended to his declaration as an exhibit a public announcement by then LAPD Chief Daryl Gates that the "authorization" given to Scn agent Eugene Ingram by police officer Phillip Rodriguez to eavesdrop upon or record the confidential communications of GA or attorney Flynn (CT 5641) was invalid and unauthorized and not a correspondence from the LAPD. (CT 5643)

It would have been obstructive of the justice the Fishman defendants were due if GA had not responded and Miscavige's lies about him had adversely influenced the Judge in the case. That is exactly what Scn sought with its SA and its judicial enforcement. It would also have been obstructive of the justice GA was due in the Fishman case, which is enshrined in the litigant's privilege. (See opposition to motion for summary adjudication, CT 3886-92) It would be obstructive of the justice GA is due and every party in all Courts of California and the United States are due if Scn can lie when it wants about him and prevent him from responding to correct its sworn to lies. Since the SA's purpose is to silence GA so that Scn can say whatever it wants about him, his credibility, litigation, testimony and character with impunity, including in legal proceedings, it is obstructive of justice.

There was no opportunity for the Fishman defendants to subpoena GA for his testimony to refute Miscavige's charges. Discovery was closed, and in fact the case had been dismissed, as can be seen by the fact that GA's declaration concerned defendants' motion for costs. There are many instances in litigation where there is neither time nor legal opportunity to take someone's deposition to obtain testimony to present needed information or refute presented misinformation. Additionally, requiring one party in litigation to obtain third party testimony by deposition that he is prevented from obtaining by declaration only by the opponent's "contracts," senselessly, but dramatically, runs up litigation costs. That is one of Scn's tactics and is in itself obstruction of

justice.

Judge Thomas also stated in his January 27, 1995 order that, since Scn was not seeking in the causes of action on which it then sought summary adjudication to prohibit disclosure to government agencies conducting investigations pursuant to statutory obligations, GA had not raised a triable issue regarding obstruction of justice. He went on to state that "even if a portion of the agreement could be construed to so prohibit (see e.g., ¶10), plaintiff is not relying on that section, nor and has defendant shown that the provision is so substantial as to render the entire contract illegal."(CT 4236-9) But that paragraph certainly is indicative of the overall object of the SA being the obstructive of justice, and thus having an illegal objective. The SA is very clear about assistance to government agencies:

> "[GA] agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in any litigation or involved in or contemplating any activity adverse to the interests of any entity or class of person (the beneficiaries)"

The fact that the non-assistance to governmental agencies was itself illegal is evidenced by Judge Thomas's permanent injunction which expressly excludes "government organ[s] or entit[ies]" from its prohibitions. If the prohibiting of assistance to government entities is obstructive of justice and illegal, is not the prohibiting of assistance to non-government entities equally as obstructive and equally as illegal? Non-government entities are equally due justice, perhaps even more due justice than the government entities, whose responsibility it is to provide justice.

The purpose of the SA is to tilt the legal playing field in Scn's favor. This should be declared illegal. For justice to be obstructed it is not necessary to obstruct the whole justice system. For justice to be obstructed it is enough for one side to use any obstruction to gain an unfair advantage. The SA certainly gains Scn an unfair advantage over GA, and there is much evidence that the SA gives Scn an unfair advantage over all its litigant adversaries. (See, e.g., Long affidavits filed in Scn v. Miller,

supra., CT 6011-102) Adding into the legal arena the other SAs signed by the other settling litigants in December, 1986, including attorneys, the obstruction becomes gargantuan.

The obstruction of justice inherent in the SA is compounded by its judicial enforcement. Because GA filed his declaration in Fishman, as, pursuant to the litigant's [absolute] privilege, he should have, to correct Miscavige's lies, Scn added the declaration as a cause of action in its complaint, and ultimately was awarded $50,000 in liquidated damages. (CT 5312,3; 8679)

The SA's obstruction of justice is also compounded by Scn's proclivity for attempting its enforcement and using it as a threat in a scope even beyond its already obstructive language. Scn brought contempt of court charges against GA for 10 alleged violations of the preliminary injunction issued May 28, 1992 by Judge Sohigian. (CT 0428-639) These contempts were discharged July 29, 1994. (CT 2690-2) Before he responded to Scn's attacks GA was threatened by Scn attorney Heller who said that GA could be sued if he testified, even though he had been subpoenaed in the Corydon case, and that to prevent his being sued GA should refuse to answer Corydon's attorney's questions. (CT 5926-8) The trier of fact in determining whether the SA's object is to obstruct justice must look at the nature of the entity using it and that entity's intentions. Judge Thomas did not do this.

GA again argued that the SA obstructs justice in his opposition to Scn's second summary adjudication motion. (CT 8270,1) Judge Thomas commented merely that the argument had been rejected with Scn's first summary adjudication. (CT 8679)

In his separate statement GA included a statement in a declaration by Scn member Long that prior to December, 1986 GA had testified in 15 cases a total of 28 trial days, had been deposed for 19 days, and had executed 28 declarations in 15 cases all of which concerned Scn. (SS 135, CT 8520; Long Declaration, CT 7742) The Court of Appeal in denying GA's appeal from the 5/28/92 injunction stated that it merely restrains, for the time being, GA's "voluntary intermeddling" in other litigation against Scn. (CT 2049) GA has never intermeddled in those litigations. His testimony and assistance has been sought by the parties in those cases.

Nothling called him from South Africa (See, e.g., CT 7004); Yanny called him from Los Angeles (See, e.g., CT 7004); Corydon subpoenaed him (CT 5990-4); Fishman's attorney put GA on his expert witness list; Miscavige involved him by filing a false sworn declaration. (CT 7655,6)

The answer to Scn's problem with GA's testimony, and with anyone's testimony, concerning the discreditable facts about its nature and activities is not to attempt to suppress or prohibit that testimony with its illegal SA and to punish GA, or anyone, for testifying. Scn's answer, if it wishes to escape liability, is to remove those discreditable facts from its nature and activities so that there is nothing to be held liable for. When Scn does so, GA's, and anyone's, testimony regarding discreditable facts will no longer be relevant and will no longer be sought.

Indeed it is the vital corrective or reformative function of the justice system which Scn seeks to avoid or obstruct with its dependence on its SAs and their enforcement. It is not in the public interest that the justice system lose its power to bring about correction and reform by enforcing obstructive contracts which suppress knowledge of matters truly needing correction and reform. As Judge Geernaert said when Scn urged him to enforce the same SA Judge Thomas has enforced:

> "I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (CT 7700)

Scn seeks to prostrate the court system. The system, on which everyone depends to prevent injustice, must let Scn, and everyone, know that it is not for sale and will not be prostrated for any amount of money.

It would be obstructive of justice to prevent perceived obstruction of justice from being reported. If a Court failed to acknowledge obstruction of justice as obstructive it would be obstructive to prevent that fact from being reported. If the court system failed to acknowledge obstruction of justice as obstructive it would be obstructive to prevent any of those facts from being reported to the media, to government and to anyone who would

listen. That is the situation here. The reporting of obstruction of justice cannot be obstructed. The reporting of perceived obstruction of justice, or any other crime, cannot be prohibited until such time as the obstruction or other crime is proven. GA has been unshakable in his conviction that the SA and Scn's enforcement are obstructive of justice since he first petitioned the Court of Appeal for permission to respond in the Armstrong I appeal in 1990. (CT 6119-21) He continues to make the argument the moment these words are typed. His argument is not without merit. For that reason alone he cannot be silenced by the obstructive SA, nor by the Marin Court's enforcement, and it is enough reason for this Court to rule that there is a triable issue regarding that obstruction.

E. There is a Triable Issue as to the Validity of the Liquidated Damages Provision

Judge Thomas stated in his January 27, 1995 order that GA had failed to raise a triable issue as to whether the liquidated damages provision is invalid, and that, quoting Civ. Code, §1671, Subd (b), the law presumes that liquidated damages provisions are "valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made." Judge Thomas stated that, although GA states that he was not involved in negotiating the provision, GA goes on to say that he discussed the provision with two attorneys before signing the agreement. Judge Thomas stated that GA clearly knew of the provision yet chose to sign it, and that GA had not shown that he had unequal bargaining power, or that he made any efforts to bargain or negotiate with respect to the provision. Judge Thomas stated that GA pointed to the fact that other SAs (the Aznarans') contain a $10,000 liquidated damages provision, but that this alone was not sufficient to raise a triable issue that GA did not show that circumstances did not change between 12/86 and 4/87 and that the Aznarans stood in the same or similar position to GA. Judge Thomas described the same or similar position as being as high up in the organization and able to cause as much damage by speaking out against Scn, or having access to as much information as GA.

It is up to the trier of fact to decide what all the

circumstances were at the time the SA was presented to GA for signing and whether the liquidated damages provision was unreasonable under those circumstances. The circumstances at the time and leading up to that time were complex, and involved many people and many complex legal and personal relationships. GA presented more than sufficient evidence to raise a question concerning the unreasonableness of the liquidated damages, and the Judge Thomas erred in his grant of summary adjudication.

In his opposition to Scn's second summary adjudication motion GA again argued the unenforceability of the liquidated damages provision. (CT 8244-50; SS 41-88, CT 8324-40) GA provided the deposition testimony of two Flynn "clients," Nancy Rodes and Michael Douglas, both of whom signed similar SAs to that signed by GA. Each of their SAs contained a $50,000 liquidated damages provision. Rodes and Douglas each were paid $7,500 to settle their claims. (SS 55,6, CT 8329,30; SS 63,4, CT 8331,2; Deposition transcript of Michael Douglas, CT 7702-10; Deposition transcript of Nancy Rodes, CT 7716; "Mutual Release Agreement," CT 7732-40) Rodes testified that she had been told by Flynn that the "settlement agreement" is "not really enforceable...no legal document can really take away your rights." She testified that in her decision to sign she relied "to a fairly large extent" on Flynn's telling her that he thought the provisions with respect to maintaining silence were not enforceable. (SS 57-60, CT 7726)

GA provided his own testimony that the liquidated damages provision was unreasonable at the time because it applied to over seventeen years of his life, about which it was impossible for him to be silent. On its face the SA did not permit GA to communicate his experiences to a doctor, lawyer, girlfriend, counselor, minister, or any agency of the government; or face a $50,000 penalty. (SS 44, CT 8325; 8218) Scn was not intending to honor its promise to cease fair game but was intending to subject GA and his friends to more attacks including publishing its own untrue and perverse accounts of his history. (SS 45, CT 8326; 8218,9) Scn's intention is shown by the fact that immediately after the settlement it provided its account of GA's history and documents concerning him to at least the Los Angeles Times, and shortly

thereafter to at least the London Sunday Times. (SS 46, CT 8326; 8218) Since Scn knew that it was going to continue to fair game GA after the settlement, continue the public controversy, and very possibly draw GA into that controversy in order to defend his reputation, it was patently unreasonable to require of him a $50,000 per utterance liquidated damages provision in Scn's SA.

GA testified that the unreasonableness of the liquidated damages provision is clearly demonstrated by the way Flynn dealt with it. When GA protested the provision and the impossibility of being silent about his seventeen years of experiences, Flynn said, "It's not worth the paper it's printed on;" "it's unenforceable." Flynn also said that "[Scn] won't change it." For that reason and that reason alone there was no discussion of the liquidated damages provision beyond that point. (SS 52, CT 8328; 8219-20) GA saw the liquidated damages provision at the time of the settlement as stupid, cruel and diabolic. Flynn said "It's not worth the paper it's printed on;" but "[Scn] won't change it." Armstrong was left with only one option: if Scn wants to keep the stupid, cruel and diabolic provision in its unenforceable SA, so be it. (SS 53, CT 8328,9; 8220)

GA testified that Scn had not been damaged in any way monetarily by any statement he had made at any time prior to the settlement; that there was no relationship between actual damages sustained by Scn and the amount of the liquidated damages; that all the money Scn spent on litigation concerning GA has been to further its fair game goals in violation of his basic human and civil rights, not on repairing damage he has done. (SS 49-51, CT 8327,8; 8219)

GA testified that he had an utterly unequal bargaining power at the time of the settlement and yet made a sincere effort to address the provision and negotiate, only to be told by Flynn "it's not worth the paper it's printed on. GA was positioned by Flynn and Scn as a "deal breaker." He was flown to Los Angeles from Boston without seeing one word of the SA, and after Flynn's other clients had been brought to Los Angeles. He was told by Flynn that Scn would continue to subject GA, all Flynn's clients, and Flynn himself to fair game unless GA signed. (SS 67,8, CT 8335,6; 8220,1)

GA testified that Scn had millions of dollars, a formidable litigation machine in-place and operating, and GA's own attorney intimidated and compromised. (SS 71, CT 8337; 8221) Flynn's co-counsel in GA's case, Julia Dragojevic, was not representing his interests, but was going along with whatever deal Flynn obtained from Scn. (SS 70, CT 8446, 8221)

Flynn's statement that "it's not worth the paper it's printed on" was not a shock to GA because he had been required to sign similar "non-disclosure" documents with liquidated damages provisions while inside Scn, and Flynn had stated many times to him that such documents were "not worth the paper they were printed on." These documents were also found to be unenforceable by the Court in Armstrong I. (SS 73, CT 8337,8; 8221; CT 6030)

If Flynn had stated or even implied at the 1986 settlement that the liquidated damages provision was valid and enforceable GA would never have signed. (SS 74, CT 8338; 8221) It is ironic that, although Flynn did not properly represent GA's interests, and in fact succumbed to the point of acting as Scn's agent, he was truthful in his representation that the liquidated damages provision was not worth the paper was printed on. It still isn't.

In his October 6 order granting Scn summary adjudication Judge Thomas stated regarding the liquidated damages provision that GA's evidence regarding Flynn's failure to represent him was not based on person knowledge. (CT 8679) GA's evidence of Flynn's failure to represent him was of course based on person knowledge. GA was there, spoke with Flynn, and had many personal dealings with Flynn before and after the settlement. GA was the client, and Flynn's employee. Flynn's non-representation is also evidenced by the SA itself, and his signing side deals with Scn.

Judge Thomas stated that GA's evidence did not raise a reasonable inference of unequal bargaining power, and that he had no personal knowledge of Scn's wealth. (CT 8679) But GA did have personal knowledge of Scn and its wealth and power, having been inside for over twelve years, much of that near the organization's top. He also had personal knowledge of its litigation machine and fair game, from his intelligence position inside Scn, because he was himself a fair game target, and because he had worked with

Flynn in the Scn litigation.

Judge Thomas also stated that Rodes' and Douglas's signing SAs with the same liquidated damages amount as GA did not raise an inference that the provision was unreasonable. (CT 8679) But the Rodes and Douglas SAs do raise an inference of unreasonability. They were paid $7,500 and yet had the same liquidated damages figure in their SAs, $50,000 per utterance. Rodes, like GA, was told by Flynn that the provision was unenforceable. Scn makes much of GA's being paid over $500,000 to settle his case. In truth it is irrelevant what Scn paid GA to settle his cross-complaint, or for anything else. It did not know what it was paying him since the amount of the settlement was confidential between Flynn and his clients. (CT 117,8) The issue is whether the liquidated damages provision was unreasonable if GA had been paid $0. Did the fact that GA was paid $500,000 mean that his cross-complaint was valued at $492,500 and his silence was worth $7,500? Or did it mean that GA knew 65 times as many discreditable things about Scn as Rodes and Douglas?

In his January 27, 1995 order Judge Thomas had stated that the disparity between the Aznarans' liquidated damages of $10,000 and GA's of $50,000 had to do with changing circumstances between 12/86 and 4/87, or how high up in the organization they were relative to GA, or whether they were able to able to cause as much damage by speaking out against Scn, or had access to as much information as he did. (CT 4236) The only fact that is absolutely clear when examining the 6 documents containing liquidated damages provisions filed in this case is that there is a triable issue regarding the circumstances at the time of GA signing of the subject SA containing the liquidated damages provision, and consequently a triable issue regarding its validity.

F. The Settlement Agreement Violates Freedom of Speech

In his opposition to Scn's motion for summary adjudication of its twentieth cause of action, GA argued that what Scn sought with its SA and its enforcement was to impermissibly prohibit his Constitutionally guaranteed First Amendment rights. (CT 8272,3) Judge Thomas's ruling on GA's presented defense was incredibly clipped: "First Amendment: First Amendment rights may be waived by

contract. (See ITT Telecom Products Corp. v. Dooley (1989)214 Cal.App.3d 307, 319.)" (CT 8680)

But Dooley concerns an employee's agreement not to disclose confidential information. It is not at all similar to the situation in this case. None of the information GA possessed was confidential. Indeed, Judge Breckenridge stated in his decision, affirmed on appeal:

> "[GA] and his counsel are free to speak or communicate upon any of [GA's} recollections or his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed." (CT 5950)

The Court of Appeal which affirmed the decision also refused Scn's effort to have the record on appeal sealed. (CT 6903) All of what GA has to say is already a matter of public record, and in no way confidential to anyone.

This case is different from Dooley because it involves, not confidential information learned on a job, but GA's experiences, now over a 28 year period, with an organization which has subjected him, and continues to subject him, to the nightmare that goes by the name fair game. This case is profoundly different from Dooley because it involves the unthinkable concept of Scn being able to say whatever it wants about GA, in exercise of its free speech right and in furtherance of its fair game doctrine, while he may not exercise his free speech right to defend himself. Pursuant to the SA and the permanent injunction, every Scientologist, every Scn lawyer and every Scn agent can say whatever they want about GA and he may not respond. Dooley does not support such an obnoxious idea.

That "First Amendment [free speech] rights may be waived by contract" does not mean that all free speech rights may be waived by contract. As with all contracts, a contract waiving the very basic right of free speech must be reasonable, and must be legal. There is a limit, and that is a limit to be decided by the trier of fact, not hidden away with the gloss that first amendment rights may be waived by contract.

Could the US require, in order to settle a case, that a person never again mention this great nation? Unless of course subpoenaed?

Could California require to settle a case, or for any reason, that a person never again mention this great state? Or rather, would any court consider enforcing such "contracts?"

Could a court enforce a contract requiring that a person not discuss the Republicans? The Democrats? The Communists? Politics? Would any court entertain a lawsuit to collect on a $50,000 liquidated damages provision in such a contract? If free speech rights can be waived by contract, could a court enforce a contract someone signed, perhaps because his attorney told him it was not worth the paper it was printed on, in which he agreed to not speak at all, about anything?

No. There must be a limit to what speech can be contracted away. Here, GA has been sued 5 times, driven into bankruptcy, driven from his job, black PRed and pilloried. The purpose of the First Amendment guarantee of free speech is to provide a defense for all citizens from such things, and indeed to prevent them from happening.

It is perhaps acceptable that Scn pays people, or even contracts with them for their silence. It is, however, completely unacceptable and impermissible for our Courts to enforce such contracts. When Courts cease such enforcement, Scn will perhaps cease its determination to silence people and its determination to rewrite history. The people will then get what they are owed in order to make informed choices which is their due: the free flow of truthful information.

G. The Settlement Agreement Violates the Thirteenth Amendment

Slavery is a state in which the slave is subject to a master and does not have the recourse to defenses available to free men. GA is subject to Scn's fair game abuse and pursuant to the SA, and now the permanent injunction, GA may not respond. Scn and the Marin Court have acted to dispossess GA of the right to defend himself that free men possess. Scn is using the Courts to make and keep GA its punching bag and slave.

The Thirteenth Amendment made slavery illegal in the United States. At the end of the twentieth century, clever lawyers in the employ of an entity that would enslave people, have found a way to reinstitute it. Psychological peonage is still peonage. Attorney

Flynn did not have the legal right to sell GA into slavery, and Scn does not have the legal right to keep him there. The SA and all such "contracts" should be seen for the instruments of slavery they are, and struck down summarily.

H. The Settlement Agreement Violates Freedom of Religion

Scn claims to be a religion, and claims all the extraordinary benefits conferred by the Constitution on religions. It claims that it is organized solely for religious purposes and that its policies and bulletins are "scriptures." (SS 138-143, CT 8522-4; revised by-laws, CT 7746, 7748,9)

It is axiomatic that there is no freedom of religion where there is no freedom to criticize, oppose or reform religion. The US was founded in great part by people fleeing "religious persecution" for opposing, criticizing or seeking to reform a religion which had the power, often provided by the State, to persecute them. The US recognized the need for its citizens to be free from religious persecution in the Religious Expression and Religious Establishment Clauses in the First Amendment to the Constitution.

Religious expression in the US has traditionally only been limited by an overriding State interest or need; e.g., to maintain peace, safety or morality. It is not permitted to destroy a fellow citizen as an expression of one's religion. It is not permitted religious expression to yell "hell fire" in a crowded theater. It is not permitted to enter private property, to wiretap, to steal, or to commit fraud, although called for in one's religious "scriptures."

The prohibition against the State's establishment of a religion has traditionally been interpreted to mean that no religion will be favored or given more support by government than any other religion. Christianity and Christians, Buddhism and Buddhists, and Scientology and Scientologists will be treated by government and all its branches in every way equally. Also anti-christians, anti-buddhists and anti-scientologists will be treated in every way equally.

With its SAs Scn is attempting to suppress and eliminate criticism; as well as opposition and reformation efforts. Any

court's enforcement of Scn's SA necessarily involves the State in one religion's suppression and elimination of criticism. Judicial enforcement also results in the promotion and establishment of Scn by the removal of opposition to promotion and establishment. Unless the State is also willing to become involved in and support every other religion's suppression or elimination of criticism, it may not assist Scn in its campaign.

It is, however, inconceivable that any US Court would prosecute someone who under any circumstances signed a contract which required that he not discuss God, Jesus Christ, the Holy Bible, or his experiences in the Christian religion; or for that matter Allah, Islam, Mohammed, the Koran, the Vedas, Krishna, or Xenu. Scn must learn that no Court will or may prosecute someone for breaking one of its unholy contracts which requires that he not discuss L. Ron Hubbard, Scn, Scientologists, Scn scriptures and the person's experiences in that religion.

It is inconceivable that a Christian church in the US would do what Scn has done to silence its critics. But even Christianity, although it would never silence anyone about itself, must not be given the opportunity. Therefore Scn's efforts to silence its critics and prevent discussion of itself must not be given judicial support. Its SAs must be ruled to judicially unenforceable.

The acceptance of criticism, opposition and calls for reform must be the natural balance to the extraordinary benefits conferred on religions. Scn chose to call itself a religion, and, when it did so, in this country, it also had to accept its critics' freedom to criticize it without State intervention.

Scn's SA impermissibly creates a religious discrimination by prohibiting GA from assisting anyone adverse to its, a religion's, interests. If such a contractual, and now judicially enforced, prohibition of help is legal along religious lines, it could be equally as legal along racial lines, or political, or sexual. But no court would consider enforcing a contract which required non-assistance to Chinese people, Conservatives, or women. No court should also consider enforcing Scn's contract.

It is abundantly clear in the reading of the complete record (and GA prays that this Court will take the time to do so) that GA

has believed throughout this litigation in the existence of God. (See, e.g., GA 6/21/91 letter, CT 7482-98) It clear that he has come to believe that his being involved in this case, and indeed all of his persecution by Scn, is for God's Purpose. (See, e.g., SS 146-156, CT 8525-39; 5894-923) It is also clear that he sees fair game as a terrible evil, and sees Scn's SAs and their enforcement as part of that evil.

The Holy Bible is certainly clear that God is intimately involved with man, religion and justice. He sends His prophets to decry injustice. The Court cannot say that GA is not guided by God. If GA had done something to disturb the peace or threaten public safety, the State can act against him. But here there is no question of peace, safety or morality; there is only a person speaking out to decry injustice, to decry what he sees as a real threat to peace, safety and morality. There is only a person speaking his thoughts. No US Court can say these are not God's thoughts. GA's words are religious expression about a religion, and they must be left completely free of State control.

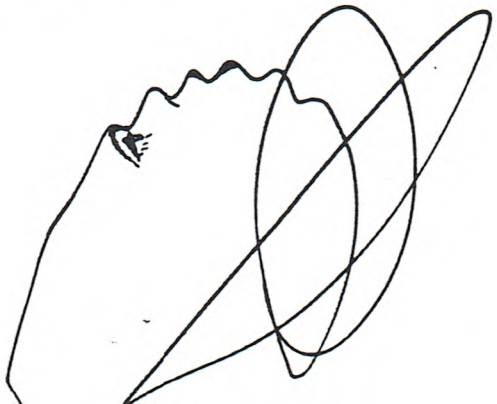
By the direction of God or not this Court has the opportunity to do a great work and eliminate a great evil. It is great not because GA is great, but because the freedom of every person to freely express his conscience, freely tell the truth and freely help any of his fellows is great.

IV. CONCLUSION

Nothing calls out for the enforcement of Scn's SA but the voice of vindictiveness. Justice calls out for nonenforcement. GA performed fairly; he dismissed his suit and gave Scientology the criticism-free opportunity it said it wanted in order to reform. Scn says it paid for peace. But there is no peace if one side continues to be attacked. Scn performed unfairly. It still has the opportunity to reform and embrace fairness. GA asks this Court to reject the Judgment in this case and do Justice to bring Scientology to take this opportunity.

Respectfully submitted,
August 25, 1997

Gerald Armstrong



PROOF OF SERVICE

I am employed in the Province of British Columbia, Canada. I am over the age of eighteen years and am not a party to the above entitled action. I served the following document:

APPELLANT'S OPENING BRIEF

on the following person(s) on the date set forth below, by delivering a true copy thereof enclosed in a sealed envelope to the addressees below:

Supreme Court of the State of California
303 2nd Street, #8023
San Francisco, CA 94107 (5 copies)

Clerk Marin Superior Court
Hall of Justice
Marin Civic Center
San Rafael, CA 94903

Andrew Wilson, Esquire
Wilson Campilongo LLP
115 Sansome Street, Suite 400
San Francisco, California 94104

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the Canadian mail at Chilliwack, B.C., Canada.

[ ] (Personal) I caused said papers to be personally served on the office of counsel.

[X] (State) I declare under penalty of perjury under the laws of Canada and the State of California that the above is true and correct.

DATED: August 25, 1997